

SERVICE DATE – MARCH 5, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34122

DALLAS, GARLAND & NORTHEASTERN RAILROAD, INC.
—ACQUISITION OF TRACKAGE RIGHTS EXEMPTION—
DALLAS AREA RAPID TRANSIT

Decided: February 26, 2002

By petition filed on December 5, 2001, Dallas, Garland & Northeastern Railroad, Inc. (DGNO or petitioner), a Class III rail carrier, seeks an exemption from the prior approval requirements of 49 U.S.C. 11323-25 to acquire trackage rights: (A) over certain lines of railroad in the vicinity of Dallas, TX, that are owned by Dallas Area Rapid Transit (DART)¹ and were acquired from the Union Pacific Railroad Company (UP) pursuant to a notice of exemption in Dallas Area Rapid Transit—Acquisition Exemption—Lines of Union Pacific Railroad Company, STB Finance Docket No. 34063 (STB served July 20, 2001); and (B) over an additional line of railroad, also in the Dallas area, owned by DART, but not part of the recent acquisition from UP.

Previously, DGNO had provided freight service on the STB Finance Docket No. 34063 lines under a lease agreement with UP.² DART has assumed the lease with the acquisition of the lines, and DGNO continues to operate pursuant to the lease agreement with DART. DGNO currently has trackage rights, as well, over certain other railroad lines owned by DART. In order to streamline and consolidate their overall operating relationship, DART and DGNO have agreed to convert DGNO's leasehold interest in the subject lines (with the exception of one segment that DART will seek to abandon) into trackage rights, under which DGNO will continue to provide freight service.

The lines over which DGNO would convert its existing leasehold interest into local trackage rights include: (1) the segment of the Denton Subdivision between approximately MP

¹ DART is a political subdivision of the State of Texas and a Class III rail carrier that has acquired certain rail corridors in the Dallas area for use in its passenger rail system. DART does not conduct freight operations itself, however; instead, third-party operators such as DGNO conduct freight operations on lines owned by DART.

² See Dallas, Garland & Northeastern Railroad, Inc.—Lease Exemption—Union Pacific Railroad Company, STB Finance Docket No. 33686 (STB served Feb. 5, 1999).

K-741.3 (Frankford Road) in Carrollton and approximately MP K-729.5 in Lake Dallas; (2) the segment of the Sherman Subdivision between approximately MP 290.5 (Stacy Road) in Allen and approximately MP 324.7 at South Sherman Junction;³ (3) the Rowlett Extension between approximately MP 745.5 (near Kirby Road) in Rowlett and approximately MP 741.3 in Rockwall; and (4) the Brookhollow Branch Line between the DFW Main at approximately MP 0.0 and the Denton Subdivision at approximately MP 3.31.⁴ DART will cancel the DGNO lease agreement that it assumed from UP following its acquisition of these lines and will enter into an agreement granting DGNO trackage rights over these lines. Following the conversion, DGNO will continue to provide freight service pursuant to its trackage rights. The scope and frequency of that service will not change as a result of the conversion of the operating rights from a lease into trackage rights. DGNO will continue to be responsible for providing freight service on these lines and for maintaining these lines.⁵

In addition, DART has agreed to grant DGNO overhead and local trackage rights over DART's line between approximately MP 750.75 in Garland and approximately MP 745.5 (near Kirby Road) in Rowlett (the Garland-Rowlett line). DART acquired this line from UP and/or its predecessor, the Missouri Pacific Railroad Company, in a series of transactions over the last several years.⁶ The Garland-Rowlett line connects with the Rowlett Extension that DART

³ DGNO will not convert into trackage rights its existing leasehold interest in the portion of the Sherman Subdivision between approximately MP 285.1 (Spring Creek Parkway) in Plano and approximately MP 290.5 (Stacy Road) in Allen. DART expects to file for abandonment and DGNO expects to file for discontinuance of service on that portion of the Sherman Subdivision.

⁴ In addition to local trackage rights, DGNO will acquire overhead or bridge trackage rights on the Rowlett Extension and the Brookhollow Branch. The portions of the Denton Subdivision and the Sherman Subdivision over which DGNO will obtain only local trackage rights will be stub-ended segments. The north end of the Denton Subdivision, at approximately MP 729.5, connects with a rail/trail operated by the City of Denton. The south end of the Sherman Subdivision, at approximately MP 290.5, connects with the line segment that will be abandoned by DART and discontinued by DGNO.

⁵ In the recent transaction with UP, DART also acquired the White Rock/Fair Park Connector between approximately MP 6.93 (the GC&SF Overpass) at Tenison Park and approximately MP 5.06 near MP Junction. DART acquired this line subject to the trackage rights of DGNO and other freight railroads. As part of the effort to streamline and consolidate their overall operating relationship, DGNO and DART intend to reaffirm that DGNO has local and overhead trackage rights on the White Rock/Fair Park Connector.

⁶ See Dallas Area Rapid Transit—Acquisition Exemption—Missouri Pacific Railroad
(continued...)

recently acquired from UP. DGNO will be the exclusive freight operator on the Garland-Rowlett line following its acquisition of trackage rights on that line from DART.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(6), the acquisition by a rail carrier of trackage rights over a line of railroad owned or operated by another rail carrier requires prior Board approval. Because both DGNO and DART are Class III rail carriers subject to Board jurisdiction, authorization under section 11323 is required for petitioner to acquire trackage rights over lines owned by DART.

Under 49 U.S.C. 10502,⁷ however, we must exempt a transaction from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction under 49 U.S.C. 11323-25 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to entry and exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions in transportation, ensure effective coordination between carriers and encourage efficient management, by permitting

⁶(...continued)

Company, STB Finance Docket No. 33334 (STB served Jan. 24, 1997); Dallas Area Rapid Transit—Acquisition and Operation Exemption—Line of Union Pacific Railroad Company, STB Finance Docket No. 33531 (STB served Jan. 9, 1998); Dallas Area Rapid Transit—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company, STB Finance Docket No. 33696 (STB served Jan. 14, 1999); Dallas Area Rapid Transit—Acquisition and Operation Exemption—Line of Union Pacific Railroad Company, STB Finance Docket No. 33839 (STB served Jan. 11, 2000); and Dallas Area Rapid Transit—Acquisition and Operation Exemption—Lines of Union Pacific Railroad Company, STB Finance Docket No. 33973 (STB served Jan. 2, 2001).

⁷ The Board has created a class exemption under 49 CFR 1180.2(d)(7) for the acquisition of trackage rights that are based on written agreements and that are not filed or sought in rail consolidation proceedings. DGNO's acquisition of trackage rights on the Garland-Rockwall line qualifies for this class exemption. However, with respect to the lines sought to be converted from lease to trackage rights, DGNO will be acquiring a lesser interest (the trackage rights) than it currently has (lease) and, therefore, DGNO is "not entirely clear" whether the class exemption applies to such a conversion transaction. Accordingly, it has filed this petition for exemption under 49 U.S.C. 10502.

DGNO and DART to streamline and consolidate their overall operating relationship [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not needed to protect shippers from the abuse of market power because it primarily involves the substitution of trackage rights for a lease agreement with operations remaining substantially the same. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the proposed transaction is limited in scope.

In order to ensure that shippers on these lines are informed of our action, we will require petitioner to serve them with a copy of this decision within 5 days after the service date of this decision and to certify to us that it has done so.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Under 49 U.S.C. 11326(c), however, we may not impose labor protection for transactions under 49 U.S.C. 11324-25 that involve only Class III rail carriers.

Grants of trackage rights are exempt from the environmental reporting requirements under 49 CFR 1105.6(c)(4). Similarly, grants of trackage rights are exempt from the historic reporting requirements under 49 CFR 1105.8(b)(3) if they will not substantially change the level of maintenance of railroad properties.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 11323-25 DGNO's acquisition of trackage rights over DART's railroad lines as described above.
2. Petitioner shall serve a copy of this decision on the shippers on the lines within 5 days after the service date of this decision and certify to us that it has done so.
3. Notice of the exemption will be published in the Federal Register on March 5, 2002.

4. This decision will be effective on April 4, 2002. Petitions to stay must be filed by March 20, 2002. Petitions to reopen must be filed by April 1, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary